

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-094

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on April 7, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated February 10, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxx on active duty in the Coast Guard, asked the Board to correct his military record by canceling a three-year reenlistment contract he signed on July 23, 1997, and reenlisting him for six years beginning at the end of his enlistment on February 27, 1998. The correction would allow the applicant to receive a Selective Reenlistment Bonus (SRB) under ALDIST 226/97.

APPLICANT'S ALLEGATIONS

The applicant alleged that in July 1997 a master chief in his unit told him that he had to reenlist even though his enlistment was not scheduled to end until February 26, 1998. He alleged that he was told if he did not reenlist in July 1997, he would not be allowed to reenlist when his enlistment ended in February 1998. Instead, he would be discharged. He alleged that he later learned the master chief was wrong; the applicant should not have been required to reenlist until his enlistment ended.

The applicant further alleged that under Article 12.B.4.b. of the Personnel Manual, his commanding officer was supposed to counsel him about his eligibility for

reenlistment prior to his reenlistment, and he was never properly counseled. The applicant also alleged that he never met with a petty officer, as required by the Personnel Manual, to discuss his reenlistment options and intentions. Because he was not properly counseled, the applicant alleged, he reenlisted on the faulty assertions of the master chief.

SUMMARY OF THE RECORD

The applicant first enlisted in the Coast Guard on July 27, 199x, for a term of four years, though July 26, 199x. On November 13, 1995, he extended his enlistment for seven months, through February 26, 199x, to have sufficient obligated service to attend "A" school.¹

In September 1996, the applicant accepted permanent change of station (PCS) orders to serve on the cutter xxxxxx. To accept the orders, he was supposed to obligate service to serve a full three-year tour on the cutter. However, his command failed to require him to obligate service, and his chain of command on the xxxxxx did not notice the failure when he arrived.

In July 1997, the applicant's command on the xxxxxx noticed his previous command's failure to have him obligate sufficient service to complete a three-year tour on the xxxxx. On July 23, 1997, the applicant reenlisted for a term of three years. No SRB was in effect for the applicant's rating at the time, and there is no administrative "page 7" entry in the applicant's record indicating that he was counseled concerning SRBs prior to his reenlistment.

On September 30, 1997, the Commandant of the Coast Guard issued ALDIST 226/97, which allowed members in the xx rating to receive an SRB with a multiple of one-half if they reenlisted or extended their current enlistments between October 1, 1997, and March 31, 1998.

On October 15, 1997, the applicant wrote a letter to the Commandant stating that in July 1997 he was never counseled about SRBs. He stated that if he had been counseled, he would not have reenlisted. Instead he would have refused to reenlist or signed a short extension to remain eligible for a maximum SRB if one became available for his skill rating, xx. The applicant said he would be willing to sign a six-year reenlistment contract in order to earn the SRB.

On December 17, 1997, the applicant's commanding officer forwarded his letter to the Commandant. The commanding officer stated that there was no page 7 adminis-

¹ Although the BCMR requested and received a copy of this extension from the Coast Guard, no copy of it appeared in his Personal Data Record files. It is unclear from the record whether the applicant's supervisor on the xxx, the master chief, knew about this extension.

trative entry in the applicant's record to show that he had been properly counseled concerning SRBs. He further stated that neither the applicant nor his supervisor, the master chief, were aware that the applicant could have delayed reenlisting until February 1998 in order to remain eligible for an SRB.

On January 26, 1998, the applicant's group commander forwarded his request to the Commandant for consideration. On September 21, 1998, the Commandant replied to the applicant's letter dated October 15, 1997, by informing him that he could apply to the BCMR for relief.

VIEWS OF THE COAST GUARD

On November 17, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request subject to a condition.

The Chief Counsel stated that the applicant's request should be granted if he can produce witnesses' statements or other evidence corroborating his improper counseling. If the applicant produces such evidence, the Chief Counsel stated, the Board should correct his record by canceling the three-year reenlistment dated July 23, 1997, reinstating the seven-month extension, and creating a new six-year enlistment beginning on February 26, 1998, which would make him eligible for an SRB with a multiple of one-half under ALDIST 226/97.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 1999, the Chairman sent a copy of the Chief Counsel's advisory opinion to the applicant and invited him to respond within 15 days. On January 18, 2000, the applicant responded. He reiterated his claim that he was not advised of his "rights or entitlements" when he reenlisted in July 1997. He also stated that he had no objections to the Chief Counsel's recommendation, but he did not submit any further corroborating evidence. The applicant indicated that he will be discharged on February 7, 2000, but still seeks correction of his military record by the Board.²

APPLICABLE REGULATIONS

Article 1.G.19.2.b. of the Personnel Manual states that a "commanding officer may cancel an Agreement to Extend Enlistment on the effective extension date when the individual concerned has reenlisted or extended on that date for any authorized enlistment term longer than the original extension agreement."

² Upon inquiry, the Coast Guard informed the BCMR that the applicant is being involuntarily discharged. However, since the events that gave rise to his discharge did not occur until after February 1998, they could not have affected his eligibility for an SRB at that time. The Coast Guard indicated that its recommendation in this case was not changed by the applicant's pending discharge.

Article 4.B.6.a.1. of the Personnel Manual states that “[s]ervice members ... E-4 and above with less than six years of active duty will not normally be transferred unless they reenlist or extend to have enough obligated service for a full tour [three years] on reporting to a new unit.” Article 4.B.6.a.4. requires receiving commands to notify the Personnel Command if members report for duty without having obligated service for a full tour.

Section 2 of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that “[a]ll personnel with 14 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement.”

Enclosure (3) to the instruction requires that members sign a page 7 administrative entry indicating that they have received and read Enclosure (5), entitled “SRB Questions and Answers.” Enclosure (5) explains that previously obligated service reduces an applicant’s SRB.

Paragraph 4.a. of Enclosure (1) to the instruction states that “[m]embers who are discharged prior to completing the period of service for which they were paid an SRB shall have all paid but unearned bonus recouped”

Article 12.B.4.b. of the Personnel Manual requires members whose enlistments are ending within six months to be counseled by their commanding officers concerning whether they will be recommended for reenlistment and by a petty office concerning SRBs.

ALDIST 226/97, issued on September 30, 1997, authorized members to be paid an SRB if they reenlisted or extended their current enlistments between October 1, 1997, and March 31, 1998. The members had to reenlist or extend their enlistments for terms of at least three years. xxswith less than six years of active duty service were authorized to receive an SRB calculated with a multiple of one-half.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant alleged that he was not properly counseled about SRBs when he reenlisted on July 23, 1997. Moreover, he alleged, he was wrongly told that he was required to reenlist because, if he did not, he would not be permitted to reenlist when his then current enlistment ended in February 1998. He alleged that, had he been properly counseled, he would have waited to reenlist to see if an SRB would be authorized for his rating. He further alleged that, if he had been allowed to wait, he would have reenlisted for six years to receive the maximum possible SRB for his rating under ALDIST 226/97.

3. The Chief Counsel argued that the Board should grant relief in this case by voiding the July 23, 1997, reenlistment contract, reinstating the seven-month extension contract, and reenlisting the applicant for six years as of February 26, 1998, if the applicant provides evidence of the incorrect information allegedly provided by his master chief.

4. The applicant was not within six months of the end of his enlistment when he reenlisted on July 23, 1997. Therefore, he was not entitled to counseling under Article 12.B.4.b. of the Personnel Manual. The applicant was entitled to SRB counseling under Section 2 of Commandant Instruction 7220.33, which he did not receive. However, the content of such counseling concerns SRB eligibility and would not necessarily have informed the applicant that he was not required to reenlist at that time.

5. The applicant was not required to reenlist in July 1997, and there was no reason for him to do so apparent in the record. Although the applicant should have been required to obligate service prior to accepting his transfer orders, he was not required to correct the Coast Guard's error by reenlisting nine months after he accepted the orders. The applicant's commanding officer stated in a letter endorsing the applicant's request that neither the applicant nor his supervisor, the master chief, knew in July 1997 that the applicant was not required to reenlist. This statement supports the applicant's allegation that his master chief wrongly told him he was required to reenlist. In light of these circumstances, the Board is persuaded that the Coast Guard erred by wrongly advising the applicant that he had to reenlist in July 1997 when in fact he was not required to reenlist until the end of his enlistment in February 1998. Therefore, the Board sees no reason to require the applicant to present additional evidence supporting his allegation.

6. Although the applicant is now being involuntarily discharged, the events that gave rise to his discharge apparently did not occur until after February 1998. Therefore, there is no reason to believe that his commanding officer on the xxxx would have refused to reenlist him for six years on February 26, 1998. This conclusion is supported by his commanding officer's letter dated December 17, 1997, which cited the applicant's "above average" performance and endorsed his request for correction.

7. The Board is persuaded that, if the applicant had not been wrongly advised and reenlisted in July 1997, he would have reenlisted for six years at the end of his enlistment on February 26, 1998, to receive a Zone A SRB under ALDIST 226/97.

8. Therefore, the applicant's request should be granted. The correction will not affect his discharge, and his SRB will be limited to the number of months of his new enlistment that he actually served, pursuant to COMDTINST 7220.33, Enclosure (1), Paragraph 4.a.

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCG, is hereby granted as follows.

The three-year reenlistment contract he signed on July 23, 1997, shall be null and void.

The seven-month extension contract he signed on November 13, 1995, shall be reinstated as valid, serving to extend his enlistment from July 27, 1997, through February 26, 1998.

His record shall be corrected to show that on February 26, 1998, he reenlisted for a term of six years for the purpose of receiving a Zone A SRB under ALDIST 226/97.

The Coast Guard shall pay the applicant any amount due him as a result of this correction. Under COMDTINST 7220.33, Enclosure (1), Paragraph 4.a., no SRB shall be paid to the applicant for the time on his new six-year enlistment remaining unserved after his discharge, which is now pending.

Barbara Betsock

Terence W. Carlson

Charles Medalen

